

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

THOMAS EUGENE SHOEMAKE, JR. CIVIL ACTION 12-2743 d

VERSUS U.S. DISTRICT JUDGE TRIMBLE

COMMISSIONER U.S. MAGISTRATE JUDGE KIRK

REPORT AND RECOMMENDATION FOR ATTORNEY FEES

In this case, claimant asks the court for an award of attorney's fees under the Equal Access to Justice Act, 28 U.S.C. 2412(d), hereinafter "EAJA" [Doc. # 14] in the amount of \$4,582.50 representing 30.55 hours at a rate of \$150 per hour. The government's position in this case was not substantially justified and the government has not objected to an award of attorney fees. However, the government did point out that claimant had not proven that he qualifies under the Act as far as the income requirement and the government has objected to the award for 3.05 hours of work performed which was work before the Social Security Administration, including review, and not before the court.

The EAJA provides in relevant part that the amount of fees awarded "shall be based upon prevailing market rates for the kind and quality of the services furnished, except that . . . attorney fees shall not be awarded in excess of \$125.00 per hour unless the court determines that an increase in the cost of living . . . justifies a higher fee." §2412(d)(A)(ii).

For some time now, this court has found that an hourly rate of \$150 is reasonable and serves the interests of claimants and the taxpayers.

I further find that the hours expended by claimant's attorney as reflected in his detailed billing records were reasonable and necessary, with the exception of the 3.05 hours of work not performed in furtherance of this court proceeding. In addition, claimant has now filed an affidavit proving he qualifies for an award under the Act.

Therefore, the claimant should be awarded the sum of \$4,125 for 27.5 hours work at \$150 per hour.

Conclusion

For the foregoing reasons, IT IS RECOMMENDED that attorney's fees in the amount of \$4,125 be awarded and ordered paid to claimant's attorney.¹

OBJECTIONS

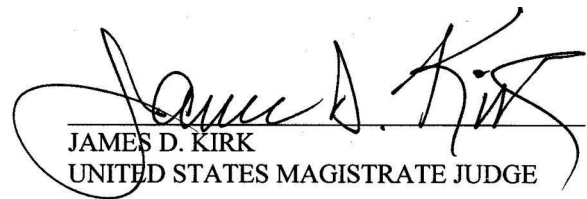
Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed.R.Civ.P. 72(b), the parties have fourteen (14) calendar days from service of this Report and Recommendation to file specific, written objections with the clerk of court. No other briefs or responses (such as supplemental objections, reply briefs etc.) may be filed. Providing a courtesy copy of the objection to the magistrate judge is neither required nor encouraged. Timely objections will be considered by the district judge before he makes his final ruling.

FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN FOURTEEN (14) CALENDAR DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT UPON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UN-OBJECTED-TO PROPOSED

¹ Although attorney fees are payable to the claimant and not to the attorney, in this case, claimant has, by affidavit, assigned the fees to his attorney. See doc. #18.

**FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT
JUDGE.**

THUS DONE AND SIGNED in chambers, in Alexandria, Louisiana, on this 29th day of
January, 2014.



JAMES D. KIRK
UNITED STATES MAGISTRATE JUDGE